

The Uniform Anatomical Gift Law

House Bills 4940-4945

October 2007

House Bills 4940-4945 represent the first major overhaul of Michigan anatomical donation laws since 1978, which is the last year the Uniform Anatomical Gift Law (UAGL) was adopted in our state. As medical technology has advanced and government regulations have increased over the past three decades, organ procurement procedures have changed dramatically. Consent to organ donation prior to death and after death has also become an issue which needs clarification through a uniform application of the law.

Gift of Life Michigan fully supports the proposed revisions to Michigan's Uniform Anatomical Gift Law (UAGL), as passed by the National Conference of Commissioners of Uniform State Laws (NCCUSL) in 2006 and introduced in Michigan House as HB 4940-4945.

Donation and Transplantation

In the United States, every hour another person dies waiting for an organ transplant. Despite significant technological improvements and numerous publicity campaigns over the past several decades, the substantial shortage for organs, tissues and eyes for life-saving or life-improving transplants continues. In Michigan, over 3,200 residents are waiting for a kidney, heart, liver, lung, pancreas or intestinal transplant. Nationally, the wait list for organs is approaching 100,000 people who are critically ill and must have a transplant to survive.

Michigan Patients Currently Waiting For A Transplant

As of October 1, 2007

Kidney	2599
Liver	392
Lung	51
Kidney/Pancreas	59
Heart	65
Pancreas	25
Kidney/Liver	9
Kidney/Heart	2
TOTAL	3202

The first successful transplant in Michigan occurred in 1964 – more than forty years ago – when a kidney was transplanted from an identical twin to her sister at the University of Michigan Hospitals. Michigan now has nine transplant centers throughout the state. A patient in our state can only be placed on the waiting list through one of these centers.

Gift of Life Michigan is a nonprofit, independent corporation which serves as the intermediary between donor hospitals and transplant centers in the state. We are certified by Medicare and designated by the Centers for Medicare and Medicaid Services as an organ procurement organization for Michigan. Gift of Life is responsible for approaching families in the hospital at the time of their loved one's death and speaking to them about the miracle of organ and tissue donation. Last year, 905 organs were transplanted from 292 Michigan residents who gave the *gift of life*. However, this only provides a small number of the critically needed organs and tissues.

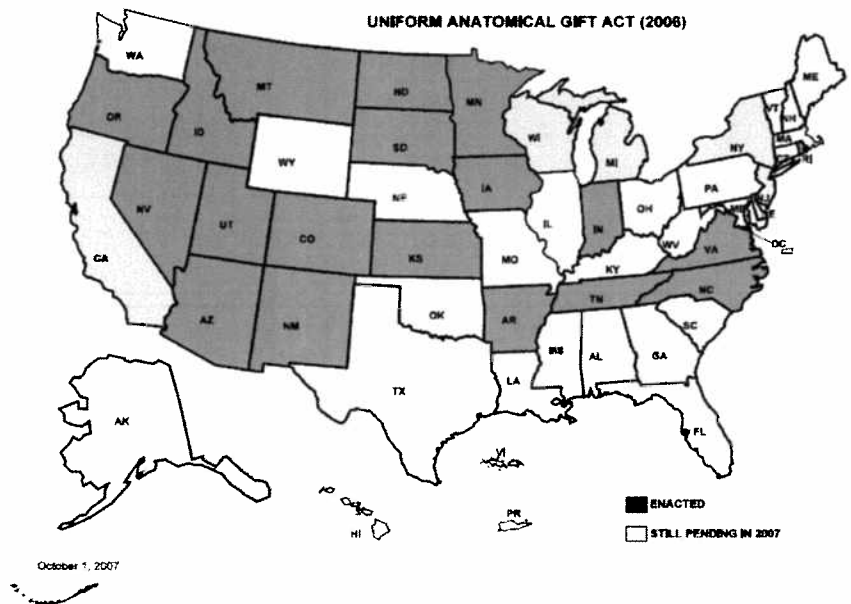
Nationally, the need was discussed and the Uniform Law Commissioners decided that the time had arrived to rewrite the Uniform Anatomical Gift Law.

The Uniform Anatomical Gift Law

The original UAGL (1968) created the ability to donate organs, eyes and tissue, in an immediate gift to a known donee or to any donee that might need an organ to survive. This was adopted state-by-state to ensure a uniform law in the nation regarding anatomical gifts. In Michigan, the entire law was repealed and replaced in 1978, which advanced organ and tissue donation in our state. However, the UAGL was revised by NCCUSL in 1987 and states were encouraged to adopt the new language. Michigan was one of the 24 states who chose not to accept the revisions, resulting in non-uniformity between our state and the states that adopted the 1987 version.

Subsequent changes to the law in our state and other states over the years have resulted in even less uniformity. In addition, neither the 1968 nor the 1987 UAGL recognizes the system of organ procurement that has developed partly under federal law. The revised 2006 UAGL, created after three years of debate and compromise on the national level, is an effort to resolve any perceived inconsistencies thereby adding to the efficiency of the current system. The anatomical gift law of the states is no longer uniform, and diversity of law is an impediment to transplantation.

To date, twenty states have adopted the 2006 revised UAGL. It was introduced in over ten other states. Harmonious law through every state's enactment of the 2006 UAGA will help save and improve lives.



House Bill 4940

Individual Autonomy

The main focus of House Bill 4940, the main bill of the package, concerns the right of an individual to designate an anatomical gift for transplantation, therapy, research or education. The legalities of how to make an anatomical gift are thoroughly explored, both a citizen's right to express their wish to be a donor upon death and also who may be approached for consent after death. Specifically, the list of those who may give consent for donation, should the donor's wishes be unknown, has been expanded to include grandparents, adult grandchildren, foster parents, public ward custodians and anyone who has "exhibited special care and concern for the decedent." In the same vein, the revised UAGL now expressly declares the rights of parents, unemancipated minors, and other parties in the donation process. Alternately, a new concept is introduced in this law – a "refusal". In order to strengthen individual rights, if a person has signed a refusal to donate, the family cannot be approached

for consent to donation. Together, these small, but important changes, work to strengthen individual autonomy with regards to organ and tissue donation.

Uniformity of Law

Many regulations have been enacted since the last UAGL was passed in Michigan (1978). They include the Centers for Medicare and Medicaid Services' Certificates of Participation (COPs), certification requirements for hospitals through the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and extensive federal allocation rules. The revised UAGL eliminates the need for a hospital to keep an organ donation log, a Michigan requirement that has become redundant given current federal regulations. It is important to note that House Bill 4940 brings Michigan into uniformity with twenty other states that have passed the UAGL, ensuring that donation can occur quickly and unimpeded across state lines. Finally, for the first time, a donor registry is defined. All donor registries in the state will be brought into conformity, requiring organ procurement organization access to a potential donor's wishes.

Eliminate Barriers to Donation

As donation has become more commonplace, a few issues have caused the unintentional result of delaying or preventing organ donation. Within a certain class of those who may give consent, such as adult siblings, the decision of the majority of those within a class will be honored. Due to time constraints, only those persons reasonably available need be approached regarding consent for donation. Consent cannot be revoked once procedures to ensure donation are underway, particularly if a recipient is already in the hospital, ready to receive their transplant. Perhaps most importantly, felony charges are created for: 1) intentionally falsifying, forging, obliterating or concealing a document of gift for financial gain, and, 2) knowingly purchasing or selling a body part for transplantation or therapy. These protections of the donor rights will serve to permit safe and healthy transplants to continue to occur in our state.

Proposed Amendment to House Bill 4940

Section 10121 of House Bill 4940 was amended by NCCUSL in March of this year to address concerns that physicians had with the unintended interpretation of language originally approved by the Commissioners in the revised 2006 UAGL.

Gift of Life Michigan fully supports the proposed amendment to House Bill 4940, which contains an amendment to Section 10121. In an effort to balance a patient's express request to be removed from mechanical support and the desire to save lives through organ donation, the hospital, family and organ procurement organization will be required to meet and decide on any medical measures to ensure all of a donor's wishes can be fulfilled.

House Bills 4941-4945

The remaining bills are intended to be tie-barred to the main bill. Once the new UAGL is enacted, numerous references that appear in MCL regarding anatomical gift donation must also be updated. It is not the intention to change current law in the other portions of MCL, but simply change the numerical references so all areas of the MCL are correct.

House Bill 4941 references the state identification card [MCL 28.292(2)] and House Bill 4942 references the driver license [MCL 257.307 and 257.310]. The willingness to make an anatomical gift is indicated through a “heart sticker” on both of these documents. There are no changes proposed that change the current intent of the law, however, Legislative Service Bureau did provide changes to update or make the law more precise.

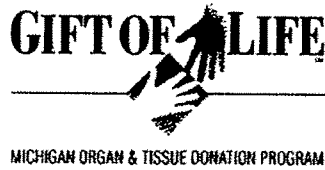
House Bill 4943 references code of criminal procedure (MCL 777.13n) and adds two new felonies. The first is for purchasing or selling the body part of a deceased individual for transplantation or therapy and the second new felony would be for falsifying, concealing, or defacing document of anatomical gift for financial gain. This would serve to strengthen the anatomical gift law.

House Bill 4944 and House Bill 4945 would provide changes to the medical examiner’s code and probate and estate’s code respectively, only as it references the donation of anatomical gift. Only the numerical references to the part of the UAGL relevant to the codes will change. The intent of the law will remain the same.

Gift of Life Michigan recognizes the efforts of Representatives Condino, Angerer, Calley, Gaffney, Coulouris, and Clack, sponsors of House Bills 4940-4945 and their willingness to bring this issue forward for consideration by the Committee. We believe that by bringing Michigan into uniformity with national standards, promoting donation through sensible laws and protecting the individual’s right to make end-of-life decisions, we will address the critical need for more organ and tissue donors in our state.

October 2007

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Michigan's Uniform Anatomical Gift Law

MCL 333.10101 – 333.10109. Last full overhaul of uniform law enacted in 1978.

Key Elements of the Revised UAGL

1. It reflects the current industry.
2. It defines a document of gift and its uses.
3. It removes barriers to donation.
4. It strengthens the rights of the individual.

Examples:

1. The newly revised UAGL contains references to changes that have occurred in the industry over the past 30 years, including regulations from the Centers for Medicare and Medicaid Services' Certificates of Participation (COPs), certification requirements for hospitals through the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and extensive federal allocation rules.
2. The proposed UAGL now provides a definition of a donor registry, contains a broad definition of how donor designation can be indicated, and a mandate that Gift of Life and other officials diligently search for a document of gift for a prospective donor. It also makes it a felony to intentionally falsify, forge, obliterate or conceal a document of gift for financial gain.
3. Implementation of the new UAGL would solve many consent problems in the hospital by providing a legal foundation for the rights of the donor. Consent for donation is to be obtained from persons who are present and able to act in a timely manner. Consent cannot be revoked once procedures to ensure donation are underway, particularly if a recipient has been readied for transplant. In an effort to balance a patient's express request to be removed from mechanical support and the desire to save lives through organ donation, the hospital, family and organ procurement organization must meet and decide on any medical measures to ensure all of a donor's wishes can be fulfilled.
4. The right of an individual to designate an anatomical gift for transplantation, therapy, research or education is fully explained. Almost one-half of the new UAGL defines how to make an anatomical gift before death and how consent is obtained upon death. A new concept is introduced – a "refusal". If a person has signed a refusal to donate, the family cannot alter that decision. The UAGL now expressly states the rights of parents, unemancipated minors, and other parties in the donation process.